

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BURT BILLINGER,

Plaintiff,

- against -

DAVID BALLONE, et al.,

Defendants.

**USDC SDNY
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**REPORT AND
RECOMMENDATION**

10 Civ. 3703 (JSR) (RLE)

To the HONORABLE JED S. RAKOFF, U.S.D.J.,

This is a *pro se* action under 42 U.S.C. § 1983. Plaintiff alleges that Defendants injured him when they arrested him on February 16, 2010. Plaintiff's Complaint was received by the *Pro Se* Office on March 29, 2010, and the matter was referred to the undersigned for general pretrial purposes on May 14, 2010.

On October 4, 2010, after determining that Defendants had not been served with copies of the Summons and Complaint, the Court ordered Plaintiff to do so by October 18, 2010, or show cause why the Complaint should not be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. As of today, Plaintiff has failed to serve Defendants, and has not contacted the Court or otherwise shown good cause why service has not been effectuated. Accordingly, I recommend that the above-entitled action be dismissed without prejudice for failure to comply with Rule 4(m) of the Federal Rules of Civil Procedure.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days after being served with a copy of the recommended disposition to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court and served on all adversaries, with extra copies delivered to the chambers of the

Honorable Jed S. Rakoff, 500 Pearl Street, Room 1340, and to the chambers of the undersigned, 500 Pearl Street, Room 1970. Failure to file timely objections shall constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985); *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (*per curiam*); 28 U.S.C. §636(b)(1) (West Supp. 1995); FED. R. CIV. P. 72, 6(a), 6(d).

DATED: November 2, 2010
New York, New York

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ronald L. Ellis", written over a horizontal line.

The Honorable Ronald L. Ellis
United States Magistrate Judge